

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Coleson Smith	Team: Squad #13	CCRB Case #: 202208690	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/26/2022 7:14 PM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 10/26/2023	EO SOL 10/26/2023	
Date/Time CV Reported Wed, 12/21/2022 11:47 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/21/2022 11:47 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Carolyn Daley	09308	967471	046 PCT
2. SGT Ariel Cruz	01114	951644	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.PO Carolyn Daley	Abuse: Police Officer Carolyn Daley stopped § 87(2)(b)	§ 87(2)(b)
B.SGT Ariel Cruz	Abuse: Sergeant Ariel Cruz stopped § 87(2)(b)	§ 87(2)(b)
C.PO Carolyn Daley	Force: Police Officer Carolyn Daley used physical force against an individual.	§ 87(2)(b)
D.SGT Ariel Cruz	Abuse: Sergeant Ariel Cruz frisked § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On December 21, 2022, § 87(2)(b) filed this complaint with the CCRB over the phone (01 BR).

On April 26, 2022, at approximately 7:14 P.M., Sergeant Ariel Cruz and Police Officer Carolyn Daley stopped § 87(2)(b) in front of § 87(2)(b) in the Bronx after observing a bulge in his jacket pocket (**Allegations A and B: Abuse of Authority – Stop**, § 87(2)(g) PO Daley pushed an unidentified civilian (**Allegation C: Force – Physical Force**, § 87(2)(g) § 87(2)(g) Sgt. Cruz frisked § 87(2)(b) (**Allegation D: Abuse of Authority – Frisk**, § 87(2)(g) and then released him. § 87(2)(g), § 87(4-b)

No summons or arrest resulted from this incident.

Body worn camera (BWC) footage was obtained from Sgt. Cruz and PO Daley (02-04 BR). § 87(2)(b) provided a cell phone video of the incident (05-06 BR).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Carolyn Daley stopped § 87(2)(b)
Allegation (B) Abuse of Authority: Sergeant Ariel Cruz stopped § 87(2)(b)
Allegation (C) Force: Police Officer Carolyn Daley used physical force against an individual.
Allegation (D) Abuse of Authority: Sergeant Ariel Cruz frisked § 87(2)(b)

§ 87(2)(b) stated (07 BR) that he was walking in the vicinity of § 87(2)(b) in the Bronx with two male civilians whom he did not wish to identify when he was stopped by Sgt. Cruz and PO Daley. As the officers approached him, he took his cell phone out of his front left pocket and began recording. Aside from a Metrocard, he did not have anything else in his front pockets. PO Daley walked up to § 87(2)(b) and asked repeatedly if he had an ID. § 87(2)(b) took a few steps back and asked PO Daley what he was being stopped for. With § 87(2)(b) facing the street, PO Daley ushered him up against a wall. PO Daley then pushed one of § 87(2)(b) friends away from her with her left hand and said, “Get away from here, move.” Sgt. Cruz approached § 87(2)(b) and PO Daley, and asked § 87(2)(b) if he had an ID. § 87(2)(b) repeatedly said no. Sgt. Cruz grabbed the belly button area of § 87(2)(b) jacket, which was zipped up at the time. Sgt. Cruz did not find anything. Sgt. Cruz went on to tell § 87(2)(b) that the officers had stopped him because they noticed a bulge in his jacket. PO Daley provided § 87(2)(b) with a business card.

Sgt. Cruz’ and PO Daley’s BWC videos were consistent with each other. The following summary is a chronological compilation of their footage: At 01:00 in PO Daley’s BWC (02 BR), the police vehicle comes to a stop in front of an auto repair shop. PO Daley steps out of the passenger seat. § 87(2)(b) is standing with his phone held up at face level in his right hand and an open umbrella in his left hand. His front right jacket pocket is lower than his left, and an object with an indefinable shape appears to be protruding from the fabric. Two unidentified males are standing to his left, one of whom has his hands raised in the air. PO Daley guides § 87(2)(b) up against the rolling gate of a business behind him. At 01:02 in Sgt. Cruz’ BWC footage (03 BR), as he is walking toward the group on the sidewalk, PO Daley extends her left arm outward, and § 87(2)(b) companion is seen moving backward. The second companion stands between PO Daley and Sgt. Cruz and obscures any physical contact PO Daley may have made with the

individual at this moment. At 01:06, Sgt. Cruz approaches § 87(2)(b) and asks if he has anything on him. § 87(2)(b) asks why he is being stopped. Sgt. Cruz responds, “Because you’ve got a bulge right here.” Sgt. Cruz’s frisk is not captured in the frame in his video. At 02:00 in PO Daley’s BWC (02 BR), Sgt. Cruz grips § 87(2)(b) front right pocket with his right hand. When he releases the pocket, the baggy fabric of the jacket falls limply toward § 87(2)(b) waist and does not appear weighed down.

The cell phone video (05 BR) provided by § 87(2)(b) was largely consistent with BWC footage. At 00:14, with PO Daley standing directly in front of § 87(2)(b) PO Daley extends her left arm outward in the direction of § 87(2)(b) companion and states “Back up.” However, physical contact between PO Daley and the companion is not captured. At no other point is PO Daley captured pushing anyone.

Sgt. Cruz stated (08 BR) he was driving when he observed § 87(2)(b) wearing a black jacket with a heavy bulge in the right jacket pocket consistent with the size and shape of a firearm. He stated the object in the pocket was weighing down the right pocket and that the shape was rectangular at the bottom and resembled the slide of a firearm. When § 87(2)(b) made visual contact with the officers in the vehicle, he bladed his body by turning to his right and covered his right pocket with his hand. Sgt. Cruz believed § 87(2)(b) was attempting to conceal what he had in his pocket. Based on the bulge, the blading of § 87(2)(b) body, and his hand covering the pocket, Sgt. Cruz made the decision to stop § 87(2)(b). PO Daley exited the vehicle and approached § 87(2)(b) followed by Sgt. Cruz. Upon approaching § 87(2)(b) Sgt. Cruz saw the bulge in § 87(2)(b) right jacket pocket again and determined it was consistent with the size and shape of a firearm. Sgt. Cruz frisked § 87(2)(b) by passing his fingers over the bulge. He did so because he believed § 87(2)(b) had a firearm in the pocket based on his observation of the object weighing down the pocket, the rectangular shape of the object, and § 87(2)(b) body language. Upon frisking the pocket, Sgt. Cruz determined it was not a firearm. Sgt. Cruz did not recall what the object was, the size of the object, or if it was hard or soft; he stated there was something in the pocket, but it was not a firearm. Sgt. Cruz did not observe PO Daley push anyone at any point. After viewing PO Daley’s BWC footage at 01:03, Sgt. Cruz stated he could not make out the shape of the bulge in § 87(2)(b) pocket.

PO Daley stated (09 BR) she based her decision to stop § 87(2)(b) solely on observations made by Sgt. Cruz that he communicated verbally to her. He informed PO Daley that he saw something he believed to be a firearm, and PO Daley saw an undefinable object in § 87(2)(b) right pocket. When § 87(2)(b) noticed the officers as they drove alongside him and his companions, he distanced himself from the officer’s vehicle by moving from the curb to the closest building, away from the vehicle, and bladed his body. She did not recall how § 87(2)(b) bladed his body, which direction he bladed it in, or when he bladed his body. PO Daley did not frisk § 87(2)(b) because she was not “100% certain” as to where Sgt. Cruz had observed the bulge on § 87(2)(b). She said she “slightly” saw a bulge while still in the car, but she did not see it upon approaching § 87(2)(b). After viewing her own BWC video from 00:30 to 00:59, PO Daley stated she had seen a bulge, but that it was only “something protruding from the pocket” and that she “couldn’t make out a shape.” She did not believe she made any physical contact with any other members of the group aside from § 87(2)(b). She did not push § 87(2)(b) or his two companions at any point.

Stop Report # § 87(2)(b) (10 BR), completed by PO Daley and approved by Sgt. Cruz, states that § 87(2)(b) was observed with “a heavy bulkiness to [his] left coat pocket, which appeared to be rectangular shaped and resembling that of a weapon.” It states that a frisk was conducted and that no weapons or contraband were recovered.

Per People v. De Bour, 40 N.Y.2d 210 (1976) (**12 BR**), officers may forcibly stop and detain a person when they have a reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. Officers may frisk an individual if they reasonably suspect that they are in danger of physical injury by virtue of the individual being armed. DeBour notes that a “pocket bulge” can be caused by “any number of innocuous objects,” while a waistband bulge is “telltale of a weapon.”

Per People v. Gerard, 942 N.Y.S.2d 112 (**13 BR**), an individual in a high-crime area early in the morning who has a weighted-down bulge in his pocket, changes course after noticing officers, and blades his body as an officer approaches him, only provides the officers with founded suspicion and, in totality, does not create the reasonable suspicion necessary to stop and frisk the individual.

Per People v. Stevenson, 7 A.D.3d 820 (**14 BR**) an officer’s observation of a bulge on an individual’s person that is “readily susceptible of an innocent as well as a guilty explanation” permits the officer to ask the individual if he has a weapon, but such an observation is insufficient to permit the officer to stop the individual.

Per People v. Allen, 1985 N.Y. App. Div. LEXIS 44506, *1 (**15 BR**), “Reaching toward one’s pocket, even where there is a heavy but undefined bulge, does not create a reasonable suspicion that the individual is armed... [W]here there is no objectively suspicious activity, there is no justification for seizure or a pat down.”

Per People v. Cornelius, 113 A.D.2d 666 (**16 BR**), “The police simply do not have *carte blanche* to search or ‘touch the pocket’ of every individual on the street who walks in a ‘little out of the ordinary’ manner, looks over his shoulder, wears a ‘wrinkled up and dirty’ ‘ragged and old’ coat, or appears to have a bulky object in his pocket... There must be describable conduct or proof of a describable object before police can probe for a concealed weapon.”

While Sgt. Cruz testified that he saw shape in the bulge in § 87(2)(b) pocket resembling a firearm, BWC footage and PO Daley’s testimony contradict this. PO Daley’s footage only shows an undefined bulge in the pocket just prior to the stop, and at the end of the stop appears to show a pocket that is not weighed down by anything. Contrary to Sgt. Cruz’ testimony, PO Daley’s statement is consistent with her BWC footage insofar as she stated she only ever saw something with an undefined shape protruding from the pocket. Sgt. Cruz’s observation that the object in the pocket produced heavy and rectangular bulge is susceptible to both guilty and innocent explanations, as a number of innocuous objects, such as a cell phone or wallet, could create such a bulge. Sgt. Cruz’ other reasons for conducting the stop, namely § 87(2)(b) blading of his body and covering of his pocket with his hand, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Per Patrol Guide Procedures 221-01 (**11 BR**), “Force may be used when it is reasonable to ensure the safety of a member of the service [...] or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.”

BWC footage shows that PO Daley extended her left arm outward toward § 87(2)(b) companion and asked him to back up. At the time, the companion was standing in close proximity

to PO Daley as she and Sgt. Cruz were stopping § 87(2)(b) on the suspicion that he was carrying a firearm. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- Sgt. Cruz has been a member of service for 11 years and has been a subject in five other CCRB complaints and 21 allegations, none of which have been substantiated.
 - 202204715 is still open to date and involves allegations of a stop and a frisk.
 - 202208638 is still open to date and involves allegations of a stop, a frisk, and a failure to provide an RTKA card.
 - § 87(2)(g)
- PO Daley has been a member of service for four years and has been a subject in 10 other CCRB complaints and 33 allegations, none of which have been substantiated.
 - 202204353 is still open to date and involves allegations of a stop and a discourteous word.
 - § 87(2)(g)
 - 202204715 is still open to date and involves allegations of a stop and a failure to provide an RTKA card.
 - 202205254 is still open to date and involves allegations of a stop, a frisk, and a search of a person.
 - § 87(2)(g)
 - § 87(2)(g)
 - § 87(2)(g)

Mediation, Civil, and Criminal Histories

